

CLARIFYING THE IMMIGRATION STATUS OF CERTAIN ALIENS

FEBRUARY 12, 1951.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GOSSETT, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 2339]

The Committee on the Judiciary, to whom was referred the bill (H. R. 2339) to clarify the immigration status of certain aliens, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

On page 1, line 10, strike out the word "fourteen" and substitute in lieu thereof the word "sixteen".

PURPOSE OF THE BILL

The purpose of this bill is to provide for the clarification, through regulations, of certain terms used in the act of October 16, 1918, as amended; and to vest in the Attorney General the authority to amend the records of entry of certain aliens who, since September 23, 1950, and prior to the enactment of this legislation, were admitted temporarily although they were applying for permanent residence in this country with appropriate documentation as immigrants.

GENERAL INFORMATION

The attention of the Committees on the Judiciary of both Houses has been directed to the increasing number of cases in which non-immigrant and immigrant visas have been withheld or admission into this country denied to aliens on the basis of regulations issued pursuant to the act of October 16, 1918, as amended. The majority of the cases brought to the attention of the committees involve spouses of servicemen, close relatives of American citizens, permanent residents previously admitted into the United States and returning

from abroad to their unrelinquished domiciles with appropriate documentation, such as reentry permits, etc.

The reason most frequently given for the denial of visas or the denial of admission appears to be the applicant's past membership of, or affiliation with, certain totalitarian youth, national labor, or professional, student, or similar organizations, or the alien's service in the German or Italian Armies, or his involuntary membership in totalitarian parties or their affiliates and auxiliaries, including those cases where it was shown that such membership or affiliation occurred by operation of law or edict, or for purposes of obtaining or preserving employment, food rations, or other essentials of living.

In order to assist the agencies of the Government charged with the administration of the immigration and naturalization laws in the promulgation of regulations designed to correct the interpretation of the terms "membership of" and "affiliated with" where used in the act of October 16, 1918, as amended, and in order to stress the intent of Congress, which did not intend to nullify or to disturb the body of judicial and administrative interpretations of such terms, the enactment of the bill H. R. 2339, as amended, is being unanimously recommended by the Committee on the Judiciary.

The bill makes clear the intent of Congress that aliens who are, or were, voluntary members of the Nazi, Fascist, or other totalitarian parties or organizations are to be excluded, but aliens who were involuntary members of Nazi, Fascist, or other non-Communist totalitarian youth, national labor, student, or similar organizations, are not to be considered ipso facto as members of, or affiliated with, the Nazi, Fascist, or other non-Communist totalitarian parties or organizations within the meaning of the act of October 16, 1918, as amended. Furthermore, aliens who served in the German or Italian or other non-Communist armed forces are not to be considered ipso facto as members of, or affiliated with, the Nazi, Fascist, or other non-Communist totalitarian parties or subsidiary organizations.

On the other hand, aliens who are, or were, members of the Communist Party or organization in any country, or who were members of, or affiliated with, an organization created, dominated, or controlled by the Communists, are to be excluded. Membership of any kind in a Communist Party or organization shall require the exclusion of the alien.

The below-quoted correspondence indicates that the text of H. R. 2339 meets with the approval of the chairman of the Senate Committee on the Judiciary and of the Attorney General.

JANUARY 30, 1951.

Hon. J. HOWARD McGRATH,
Attorney General of the United States,
Department of Justice, Washington 25, D. C.

MY DEAR MR. ATTORNEY GENERAL: Following up my telephone conversation with you this afternoon, and along the lines which we discussed, I have prepared an amended version of my bill S. 728, which accomplishes the two purposes of having the Attorney General write the proposed regulation, rather than having it written by Congress, and providing a means for adjusting the status of aliens now in this country, who would have been admissible for permanent residence, at the time they entered the country, under such a construction of the law as this proposed regulation would provide.

My new version of the bill is as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Attorney General is hereby authorized and directed to provide by regulations that the terms 'members of' and 'affiliated

with' where used in the Act of October 16, 1918, as amended (except where, in context, such terms relate to communism), shall include only membership or affiliation which is or was voluntary, and shall not include membership or affiliation which is or was solely (a) when under fourteen years of age, (b) by operation of law, or (c) for purposes of obtaining employment, food rations, or other essentials of living, and where necessary for such purposes.

"SEC. 2. The Attorney General is authorized in his discretion to record the entry of any alien to have been for permanent residence in any case where the alien heretofore, when applying for admission for permanent residence, was temporarily admitted pursuant to the ninth proviso of section 3 of the Immigration Act of February 5, 1917, as amended, and whose inadmissibility for permanent residence was determined to be solely by reason of membership or affiliation (other than membership or affiliation related to communism) under subsection 2 of section 1 of the Act of October 16, 1918, as amended."

I am prepared to recommend that my bill S. 728 be amended in committee so as to conform to the above text; and I should be grateful if you would let me know, as speedily as may be convenient, your views with respect to this proposal.

Kindest personal regards.

Sincerely,

PAT McCARRAN, *Chairman.*

FEBRUARY 1, 1951.

Hon. PAT McCARRAN,
*Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.*

MY DEAR SENATOR: With further reference to our discussion of January 30, 1951, and in response to your letter of the same date, this is to advise that I am in complete agreement with your amended version of your bill S. 728 which reads as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Attorney General is hereby authorized and directed to provide by regulations that the terms 'members of' and 'affiliated with' where used in the Act of October 16, 1918, as amended (except where, in context, such terms relate to communism), shall include only membership or affiliation which is or was voluntary, and shall not include membership or affiliation which is or was solely (a) when under fourteen years of age, (b) by operation of law, or (c) for purposes of obtaining employment, food rations, or other essentials of living, and where necessary for such purposes.

"SEC. 2. The Attorney General is authorized in his discretion to record the entry of any alien to have been for permanent residence in any case where the alien heretofore, when applying for admission for permanent residence, was temporarily admitted pursuant to the ninth proviso of section 3 of the Immigration Act of February 5, 1917, as amended, and whose inadmissibility for permanent residence was determined to be solely by reason of membership or affiliation (other than membership or affiliation related to communism) under subsection 2 of section 1 of the Act of October 16, 1918, as amended."

It appears that this measure will accomplish our mutual objectives. Your interest and kind cooperation in this matter are greatly appreciated.

With warm personal regards.

Sincerely,

J. HOWARD McGRATH, *Attorney General.*

The act of October 16, 1918, as amended, reads as follows:

That any alien who is a member of any one of the following classes shall be excluded from admission into the United States:

- (1) Aliens who seek to enter the United States whether solely, principally, or incidentally, to engage in activities which would be prejudicial to the public interest, or would endanger the welfare or safety of the United States;
- (2) Aliens who, at any time, shall be or shall have been members of any of the following classes:

- (A) Aliens who are anarchists;
- (B) Aliens who advocate or teach, or who are members of or affiliated with any organization that advocates or teaches, opposition to all organized government;
- (C) Aliens who are members of or affiliated with (i) the Communist Party of the United States, (ii) any other totalitarian party of the United

States, (iii) the Communist Political Association, (iv) the Communist or other totalitarian party of any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state; (v) any section, subsidiary, branch, affiliate, or subdivision of any such association or party; or (vi) the direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt;

(D) Aliens not within any of the other provisions of this paragraph (2) who advocate the economic, international, and governmental doctrines of world communism or the economic and governmental doctrines of any other form of totalitarianism, or who are members of or affiliated with any organization that advocates the economic, international, and governmental doctrines of world communism, or the economic and governmental doctrines of any other form of totalitarianism, either through its own utterances or through any written or printed publications issued or published by or with the permission or consent of or under the authority of such organization or paid for by the funds of such organization;

(E) Aliens not within any of the other provisions of this paragraph (2), who are members of or affiliated with any organization which is registered or required to be registered under section 7 of the Subversive Activities Control Act of 1950, unless such aliens establish that they did not know or have reason to believe at the time they became members of or affiliated with such an organization (and did not thereafter and prior to the date upon which such organization was so registered or so required to be registered acquire such knowledge or belief) that such organization was a Communist organization.

(F) Aliens who advocate or teach or who are members of or affiliated with any organization that advocates or teaches (i) the overthrow by force or violence or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage.

(G) Aliens who write or publish, or cause to be written or published, or who knowingly circulate, distribute, print, or display, or knowingly cause to be circulated, distributed, printed, published, or displayed, or who knowingly have in their possession for the purpose of circulation, publication, or display, any written or printed matter, advocating or teaching opposition to all organized government, or advocating (i) the overthrow by force or violence or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage; or (v) the economic, international, and governmental doctrines of world communism or the economic and governmental doctrines of any other form of totalitarianism.

(H) Aliens who are members of or affiliated with any organization that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in subparagraph (G).

(3) Aliens with respect to whom there is reason to believe that such aliens would, after entry, be likely to (A) engage in activities which would be prohibited by the laws of the United States relating to espionage, sabotage, public disorder, or in other activity subversive to the national security; (B) engage in any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unconstitutional means; or (C) organize, join, affiliate with, or participate in the activities of any organization which is registered or required to be registered under section 7 of the Subversive Activities Control Act of 1950.

SEC. 2. The provision of paragraph (2) of section 1 shall not be applicable to any alien who is seeking to enter the United States temporarily as a nonimmigrant under section 3 (1) or 3 (7) of the Immigration Act of 1924, as amended (43 Stat. 153; 8 U. S. C. 201).

SEC. 3. No visa or other documentation shall be issued to any alien who seeks to enter the United States either as an immigrant or as a nonimmigrant if the consular officer knows or has reason to believe that such alien is inadmissible to the United States under this Act. The case of an alien within any of the categories enumerated in section 1 shall not be defined as an emergency case within the meaning of section 30 of the Alien Registration Act of 1940 (54 Stat. 673; 8 U. S. C. 451).

SEC. 4. (a) Any alien who was at the time of entering the United States, or has been at any time thereafter, a member of any one of the classes of aliens enumerated in section 1 (1) or section 1 (3) of this Act or (except in the case of an alien who is legally in the United States temporarily as a nonimmigrant under section 3 (1) or 3 (7) of the Immigration Act of 1924, as amended) a member of any one of the classes of aliens enumerated in section 1 (2) of this Act, shall, upon the warrant of the Attorney General, be taken into custody and deported in the manner provided in the Immigration Act of February 5, 1917. The provisions of this section shall be applicable to the classes of aliens mentioned in this Act, irrespective of the time of their entry into the United States.

(b) The Attorney General shall, in like manner as provided in subsection (a) of this section, take into custody and deport from the United States any alien who at any time, whether before or after the effective date of this Act, has engaged, or has had a purpose to engage, in any of the activities described in paragraph (1) or in any of the subparagraphs of paragraph (3) of section 1, unless the Attorney General is satisfied, in the case of any alien who engaged in any activity within category (C) of paragraph (3) of section 1 that such alien did not know or have reason to believe at the time such alien became a member of or affiliated with the organization referred to in category (C) of paragraph (3) of section 1 (and did not thereafter and prior to the date upon which such organization was registered or required to be registered under section 7 of the Subversive Activities Control Act of 1950 acquire such knowledge or belief) that such organization was a Communist organization.

SEC. 5. Notwithstanding the provisions of sections 16 and 17 of the Immigration Act of February 5, 1917, as amended (39 Stat. 885-887; 8 U. S. C. 152, 153), which relate to boards of special inquiry and to appeal from the decisions of such boards, any alien who may appear to the examining immigration officer at the port of arrival to be excludable under section 1 shall be temporarily excluded, and no further inquiry by a board of special inquiry shall be conducted until after the case is reported to the Attorney General and such an inquiry is directed by the Attorney General. If the Attorney General is satisfied that the alien is excludable under section 1 on the basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest, safety, or security, he may deny any further inquiry by a board of special inquiry and order such alien to be excluded and deported.

SEC. 6. (a) The provisions of the seventh proviso to section 3 of the Immigration Act of February 5, 1917, as amended (39 Stat. 875; 8 U. S. C. 136), relating to the admission of aliens to the United States, shall have no application to cases falling within the purview of section 1 of this Act.

(b) The provisions of the ninth proviso to section 3 of the Immigration Act of February 5, 1917, as amended (39 Stat. 875; 8 U. S. C. 136), relating to the temporary admission of aliens to the United States, shall have no application to cases falling within the purview of section 1 (1) and 1 (3) of this Act. The Attorney General shall make a detailed report to Congress in any case where the authority granted in the ninth proviso above is exercised on behalf of any alien excludable under section 1 (2).

(c) Notwithstanding the provisions of the tenth proviso to section 3 of the Immigration Act of February 5, 1917, as amended (39 Stat. 875; 8 U. S. C. 136), or any other law—

(1) the provisions of section 1 (1) and 1 (3) shall be applicable to any alien within the purview of section 3 (1) of the Immigration Act of 1924, as amended (43 Stat. 153; 8 U. S. C. 201), except ambassadors, public ministers, and career diplomatic and consular officers who have been accredited by a foreign government recognized de jure by the United States and who are accepted by the President or the Secretary of State, and the members of the immediate families of such aliens, who shall be subject to exclusion under

the provisions of section 1 (1) only pursuant to such rules and regulations as the President may deem to be necessary; and

(2) the provisions of section 1 (1) shall be applicable to any alien within the purview of section 3 (7) of the Immigration Act of 1924, as amended (43 Stat. 153; 8 U. S. C. 201); the provisions of section 1 (3) shall be applicable to any such alien except a designated principal resident representative of a foreign government member of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (59 Stat. 669), accredited resident members of the staff of such representative, and members of his immediate family.

(d) The proviso to section 15 of the Immigration Act of 1924, as amended (43 Stat. 153; 8 U. S. C. 201), relating to the departure of any alien who has failed to maintain status under section 3 (1) or 3 (7) of said Act shall not be applicable in the case of any alien who would be subject to exclusion under the provisions of section 1 of this Act if he were applying for admission.

Sec. 7. Upon the notification by the Attorney General that any country upon request denies or unduly delays acceptance of the return of any alien who is a national, citizen, subject or resident thereof, the Secretary of State shall instruct consular officers performing their duties in the territory of such country to discontinue the issuance of immigration visas to nationals, citizens, subjects, or residents of such country, until such time as the Attorney General shall inform the Secretary of State that such country has accepted such alien.

Sec. 8. (a) Any person who knowingly aids or assists any alien excludable under section 1 to enter the United States, or who connives or conspires with any person or persons to allow, procure, or permit any such alien to enter the United States, shall be guilty of a felony, and upon conviction thereof shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than five years, or both.

(b) Any alien who shall, after he has been excluded and deported or arrested and deported in pursuance of the provisions of this Act, thereafter and without the express authorization of the Attorney General return to or enter the United States or attempt to return to or to enter the United States shall be deemed guilty of a felony, and upon conviction thereof shall be punished by imprisonment for a term of not more than five years; and shall, upon the termination of such imprisonment, be taken into custody, upon the warrant of the Attorney General, and deported in the manner provided in the Immigration Act of February 5, 1917.

Sec. 9. Any statute or other authority or provision having the force or effect of law, to the extent that it is inconsistent with any of the provisions of this Act, is hereby expressly declared to be inapplicable to any alien whose case is within the purview of this Act.

Sec. 10. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remaining provisions of this Act, or the application of such provisions to other persons or circumstances, shall not be affected thereby.

Upon consideration of all the facts in this case, the committee is of the opinion that H. R. 2339, as amended, should be enacted and it accordingly recommends that the bill do pass.

